

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

6 UNITED STATES OF AMERICA

Vs. CR. NO. 03-61-N

10 ALBERT CARTER

CHANGE OF PLEA HEARING

* * * * *

Before Hon. Vanzetta Penn McPherson,
Magistrate Judge, at Montgomery, Alabama,
Commencing on April 30, 2003

22 APPEARANCES: For the Government: James B. Perrine
23 Assistant U.S. Attorney
24 For the Defendant: Joseph P. Van Heest,
25 Federal Defender

5 THE COURT: United States versus Albert Carter.

6 MR. VAN HEEST: Your Honor, if we may have one
7 moment to have him sign the consent form, so I can explain it
8 to him briefly and he can sign that.

9 THE COURT: Yes.

10 (pause)

11 THE CLERK: Raise your right hand. You do solemnly
12 swear or affirm that the testimony you give in this cause to
13 be the truth, the whole truth, and nothing but the truth, so
14 help you God.

15 THE DEFENDANT: I do.

16 THE COURT: The Defendant has executed his consent
17 to enter his plea before a United States Magistrate Judge and
18 the parties have tendered to the Court a plea agreement
19 pursuant to Rule 11(c) (1) (C), which has been signed by the
20 attorneys and by the Defendant. The Defendant was indicted on
21 27 February, 2003, one count with a forfeiture allegation. He
22 was indicted on possession of a firearm having been convicted
23 of a felony in the Circuit Court of Tuscaloosa County. The
24 date of the alleged criminal offense is 19 February, 2003 in
25 Troy, Alabama. The Defendant pleads guilty this morning to

1 count one, and will concede the forfeiture allegation. Mr.
2 Carter, do you understand the nature of these proceedings?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Is it your intent to enter a plea of
5 guilty today to the charge in the indictment?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: What is your full name?

8 THE DEFENDANT: Albert Carter, Junior.

9 THE COURT: How old are you?

10 THE DEFENDANT: 50.

11 THE COURT: How far did you go in school?

12 THE DEFENDANT: 8th grade.

13 THE COURT: Do you have a GED?

14 THE DEFENDANT: No. No, Your Honor.

15 THE COURT: Have you worked during your lifetime?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And have you assumed responsibility for
18 your own financial affairs?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you own a home?

21 THE DEFENDANT: Well, me and my wife, we was paying
22 the mortgage on one.

23 THE COURT: All right. Are you currently under the
24 influence of any drug, medication or alcoholic beverage?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: Have you ever been confined in any
2 institution for mental illness or addiction to narcotic drugs
3 of any kind?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Have you received and read a copy of the
6 indictment pending against you, that is, the written charge?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Have you discussed the charge with Mr.
9 Van Heest?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And do you understand the charge?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Do you fully understand the maximum
14 penalty that can be imposed upon you?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Are you fully satisfied with the
17 counsel, representation and advice given to you in this case
18 by your attorney, Mr. Van Heest?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Is your willingness to plead guilty in
21 this case the result of discussions that you have had with
22 Mr. Van Heest and the discussions that Mr. Van Heest has had
23 with Mr. Perrine, the government's lawyer?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Have you had an opportunity to read and

1 review the plea agreement in this case before you signed it?

2 THE DEFENDANT: No, Your Honor. We just discussed
3 it, I ain't read it today yet.

4 THE COURT: You have not read it?

5 THE DEFENDANT: Not yet.

6 MR. VAN HEEST: You have never read this?

7 THE COURT: Let's adjourn and let you read it. Take
8 Mr. Carter back to the cell block here on this floor, let him
9 read it and we will call the next case.

10 (At which time other matters were heard by the
11 Court, after which, the following occurred:)

12 THE COURT: Mr. Carter is ready?

13 MR. VAN HEEST: Yes, Your Honor.

14 MR. PERRINE: Your Honor, do you have the original
15 plea agreement?

16 MR. VAN HEEST: I believe you do, yes.

17 THE COURT: Yes. Do you need it?

18 MR. VAN HEEST: No, Your Honor. I was just trying to
19 keep track and make sure it was signed and before the Court.

20 THE COURT: Mr. Carter, you were previously before
21 the Court, the Court asked you if you had read the plea
22 agreement, you indicated that you had not. The Court took a
23 break to allow you to do that. Have you now read the plea
24 agreement?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Do you understand its terms?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Is it any different at all from the
4 discussions that you had with Mr. Van Heest?

5 THE DEFENDANT: It is just one thing I just want to
6 get clarified.

7 THE COURT: Please ask.

8 THE DEFENDANT: That if the Court don't go along
9 with the 57 months, and they want to enhance it, will I still
10 have my right to withdraw my plea?

11 THE COURT: Absolutely.

12 THE DEFENDANT: That's all I wanted to know then.

13 THE COURT: This is a plea being entered into by
14 Rule 11(c)(1)(C), it permits you to enter a plea on the
15 recommendation that you and the government have agreed to. It
16 does not bind the Court, the Court still has the discretion
17 to sentence you to that sentence, a lower sentence or a
18 higher sentence. You get to withdraw your plea under these
19 circumstances only if the Court sentences you to a higher
20 sentence. It doesn't mean you get to withdraw your plea if
21 the Court changes because the Court may change and go down,
22 in which case you don't get to withdraw; do you understand
23 that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: You get to withdraw it if the Court

1 exceeds the sentence or goes beyond the sentence that is
2 agreed to in the plea agreement; do you fully understand
3 that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you have any other questions about
6 the plea agreement?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Please feel free to ask if you do.

9 THE DEFENDANT: I ain't got no more questions.

10 THE COURT: All right. Other than what is in the
11 plea agreement has anyone made any promises or assurances of
12 any kind to you to induce you to plead guilty?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Has anyone said or done anything that
15 forces you to plead guilty?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: I have already indicated to you that the
18 plea agreement is merely a recommendation to the Court; do
19 you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you understand that the offense to
22 which you are pleading guilty is a felony offense?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And if your plea is accepted and you are
25 adjudged guilty of that offense you may be deprived of

1 certain valuable civil rights, including the right to vote,
2 the right to hold public office, the right to sit on a jury
3 and the right to possess a firearm.

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you understand that if you are found
6 guilty it may be illegal even to possess a firearm?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Do you understand that parole has been
9 abolished in the federal system and that if you are sentenced
10 to serve a specific term in prison you will serve that entire
11 term and not be released on parole?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Do you understand that if you serve the
14 entire time and are released on supervised release and
15 violate the terms of your supervised release you could be
16 returned to prison to serve longer than what is agreed to in
17 the plea agreement without that violating your plea
18 agreement?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Are you sure you understand that part?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: All right. Do you understand how the
23 sentencing guidelines may affect you or might apply to your
24 case?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: The plea agreement contains a
2 recommendation for a specific sentence of 57 months, three
3 months shy of five years; do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And when I said that parole is abolished
6 I mean if you are sentenced to 57 months that's how long you
7 will serve; do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Have I discussed with you the -- your
10 waiver of your right to appeal?

11 THE DEFENDANT: No, you hadn't gotten to that part.

12 THE COURT: Let's talk about that. Do you understand
13 that ordinarily you would have the right to appeal the
14 sentence in this Court to the Court of Appeals for the 11th
15 Circuit?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Do you understand that by signing this
18 plea agreement you waive or give up your right to appeal the
19 sentence?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you understand that you also waive or
22 give up your right to challenge the sentence except on two
23 grounds, either that your lawyer, Mr. Van Heest, did not
24 effectively assist you or the prosecutor for the government
25 engaged in misconduct, do you understand that those are the

1 only two grounds upon which you can appeal the sentence?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Do you understand what that means?

4 THE DEFENDANT: Yes, I understand about the appeal.

5 THE COURT: All right. Do you understand, Mr.

6 Carter, that you have a continuing right to plead not guilty?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: That no one can force you to plead
9 guilty?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: That if you elected to go to trial you
12 would be presumed innocent?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And that the government would have the
15 burden of proving your guilt beyond a reasonable doubt?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Do you further understand that at a
18 trial you would have the following constitutional rights,
19 namely, the right to the assistance of counsel for your
20 defense?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: The right to see and hear all of the
23 witnesses and have them cross-examined in your defense?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: The right to testify on your own behalf

1 or to decline to testify, if you chose not to do so, without
2 having that used against you?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And the right to the issuance of
5 subpoenas to compel the attendance of witnesses to testify
6 for you?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Do you understand that if you enter a
9 plea of guilty that is accepted by this Court you waive or
10 give up your right to a trial and all of the other
11 constitutional rights that I have explained to you?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Do you further understand that if your
14 plea of guilty is accepted there will be no trial?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Do you understand that following this
17 proceeding if your plea of guilty is accepted that the
18 probation officer will prepare a presentence investigation
19 report?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: That you will be expected to cooperate
22 by providing information and answers to their questions for
23 presentation to the Judge?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Having stated that you understand your

1 constitutional rights, the nature of the charges against you
2 and the maximum penalty that can be imposed against you, Mr.
3 Carter, how do you plead?

4 THE DEFENDANT: I plead guilty to the charge.

5 THE COURT: Tell the Court what you did.

6 MR. VAN HEEST: Judge, would it be easier to do a Q
7 and A or would you rather he just tell you what he did with
8 regard to these elements?

9 THE COURT: I will let Mr. Carter tell me what he
10 did.

11 MR. VAN HEEST: Your Honor, if I may just discuss
12 the matter very briefly with him?

13 THE COURT: Yes.

14 (At which time an off-the-record discussion was had
15 between the Defendant and counsel.)

16 THE COURT: What did you do, Mr. Carter?

17 THE DEFENDANT: Well, I was caught with a gun in
18 Pike County, and I had previously been convicted of attempted
19 murder, I was on parole.

20 THE COURT: When was that?

21 THE DEFENDANT: February 19th.

22 THE COURT: 20003?

23 THE DEFENDANT: 2003.

24 THE COURT: And this happened in Troy, Alabama?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Did you have the gun?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: What was it?

4 THE DEFENDANT: A .22 revolver.

5 THE COURT: Satisfied, Mr. Perrine?

6 MR. PERRINE: Your Honor, the -- Mr. Carter, was the
7 firearm the same one that was charged in the indictment?

8 THE DEFENDANT: Yes, sir.

9 MR. VAN HEEST: We would stipulate.

10 MR. PERRINE: Stipulate to the interstate nexus?

11 MR. VAN HEEST: Stipulate that it moved in
12 interstate commerce.

13 MR. PERRINE: And you knew you were in possession of
14 the gun?

15 THE DEFENDANT: Yes, sir.

16 MR. PERRINE: Satisfied, Your Honor.

17 THE COURT: It is the finding of the Court in the
18 case of United States versus Albert Carter that the Defendant
19 is fully competent and capable of entering an informed plea,
20 that the Defendant is aware of the nature of the charges and
21 the consequences of the plea, and that the plea of guilty is
22 a knowing and voluntary plea containing each of the essential
23 elements of the offense, and supported by an independent
24 basis in fact. The Court will therefore recommend that the
25 plea be accepted and that the Defendant be adjudged guilty of

1 the offense. Sentencing in this case is set for 5 August,
2 2003, until that time the Defendant is remanded to the
3 custody of the marshal.

4 MR. PERRINE: One further thing, just the consent to
5 forfeiture of the firearm.

6 THE COURT: Yes, thank you. The plea agreement does
7 contemplate that the Defendant will consent to the forfeiture
8 of the firearm. Mr. Carter, do you understand that as part of
9 your plea agreement you have agreed that the government may
10 take full possession, ownership and control over that
11 firearm?

12 THE DEFENDANT: Yes, Your honor.

13 THE COURT: And that you relinquish all of your
14 right to possess or assert title to or ownership over the
15 firearm?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Thank you.

18 MR. PERRINE: Thank you, Your Honor.

19 * * * *

20 I certify that the foregoing is a correct transcript
21 from the record of proceedings in the above-entitled matter.
22 This the 8th day of July, 2003.

23

24

25


Anna R. Dickens
Official Court Reporter